

**TESTIMONY**

**OF**

**JOHN L. O'DONNELL, Jr.**

**SUBMITTED TO**

**The Committee on Indian Affairs**

**Of the United States Senate**

**9:30 a.m., April 12, 2000**

**In a Hearing on**

**National Academy of Public Administration Report on**

**BIA Management Reforms**

Mr. Chairman and Members of the Committee,

My name is John L. O'Donnell, Jr. I am an attorney representing the affected Indian federal employees of the Office of Information Resources Management (OIRM), Bureau of Indian Affairs (BIA) who are concerned about their jobs and the hundreds of thousands of Indian trust beneficiaries who are adversely affected by the actions of the Department of Interior and its Bureau of Indian Affairs.

I appreciate the opportunity to testify today concerning the arbitrary dismantling of the OIRM in Albuquerque, New Mexico and its relocation to Reston, Virginia. By its actions, the BIA is effectively terminating scores of highly trained, long term Indian employees and replacing them with non-Indian labor supplied by an outside contractor with little or no experience in OIRM policies or procedures.

The BIA sought to justify the dismantling of the Albuquerque OIRM office by a dishonest and distorted reading of the August 1999 National Academy of Public Administrators (NAPA) management study. Shutting down the Albuquerque OIRM office is contrary to both the letter and the spirit of the NAPA report. The NAPA Report recommended the establishment of a full-time Chief Information Officer in the office of Policy, Management and Budget to bring the benefits of information technology to the BIA; the Report makes no recommendation concerning dismantling and moving the OIRM operations and data center. Moreover, it should be noted that the NAPA Report does not criticize the operations division of OIRM. Further, in Declarations given before Judge Lamberth's court, the BIA has declared that the decision to move OIRM was an executive committee decision and not a specific NAPA recommendation.

This forced and precipitous relocation of the OIRM operations office adversely impacts the federal government's ability to fulfill its trust duties owed to Indians, and is contrary to law in the following respects:

**1. The Relocation Is Adverse to Trust Reform and Impairs Indian Trust Management.**

As this Committee is aware, on December 21, 1999, Judge Royce Lamberth of the district court for the District of Columbia issued his opinion in *Cobell vs. Babbitt, et. al.* in which he held that the federal government had breached its fiduciary duties owed to individual Indians by its failure to properly administer Indian trust assets. Primary among the deficiencies found by Judge Lamberth is the government's failure to keep adequate records as to trust assets and the proceeds therefrom. Moreover, in a separate decision, Judge Lamberth held Secretaries Babbitt and Rubin in civil contempt of court for their failure to produce trust documents, their misrepresentations to the Court, their cover-up of their misrepresentations, and their repeated refusal to obey court orders.

As set forth more fully in the filed Declaration of Mona Infield, a Supervisory Computer Specialist at OIRM, the relocation of the OIRM operations functions from Albuquerque exacerbates the federal government's continuing breach of its trust duties owed to Indian trust beneficiaries by significantly increasing the risk that key documents will continue to be destroyed, and that Indian trust funds are lost, rendered inaccessible or outright embezzled. By way of example, the relocation is so inept and poorly planned that Judge Lamberth stated "BIA has now placed itself in the incredible position that it cannot now create such a [security] plan with its own employees.... This entire fiasco is vivid proof to this Court that Secretary Babbitt and Assistant Secretary Gover have still failed to make the kind of efforts that are going to be required to ever make trust reform a reality." (See Exhibit A, transcript of hearing dated April 4, 2000.)

The centerpiece of the government's promise for trust reform is the implementation of the Trust Asset and Accounting Management System ("TAAMS"). This is a system that was purchased by the Department of Interior without the benefit of an integrated architecture. As a result of the Department of Interior's refusal to properly plan and design an integrated architecture for TAAMS, and trust reform in general, TAAMS does not work and it is not known if TAAMS will ever work. OIRM employees have made it known to BIA senior management that the TAAMS application is a sham and will not work.

In a mismanaged and escalating crisis situation, the employees of OIRM represent the last bastion of hope for more than five hundred thousand Indians who depend on OIRM's consistent and expeditious handling of trust funds – specifically getting checks to the Indian trust beneficiaries who rely on trust funds to feed, clothe and shelter themselves.

Following are examples of the relocation's impact on trust management:

- 0.1 As we speak, the dismantling of the OIRM office has resulted in a rash of telephone calls from trust beneficiaries who have begun to feel the effects of this illogical and irreparable destruction of data and services.
- 0.2 The Treasury department cannot fulfill its trust obligations in identifying checks that have been issued to individual Indian trust beneficiaries nor can Treasury identify the source of that income since ISSDA reporting is deficient.
- 0.3 The BIA has hired outside contracting groups to assist in the relocation. Contracted employees have publicly stated that they may not have the required institutional knowledge...but they will eventually get it figured out...even if it takes them two or more months. OIRM employees react within hours, sometimes minutes, to address problems that threaten to come between the trust fund beneficiaries and their often sole-sources of income.
- 0.4 The Gila River Tribe has requested and received an electronic copy of their tribe's data because they do not trust the contractors to preserve their data. Additionally, numerous other trust beneficiaries have notified the OIRM help desk (currently manned by one temporary employee) that they too would prefer to have a copy of their data electronically sent to them for safe-keeping.

This committee represents the best hope for hundreds of thousands of Indian trust beneficiaries to ensure that no further irreparable damage will occur to the trust fund data or to the operations which provide compensation for property and lands belonging to the Indians.

**1. The Relocation Is Contrary to Governing Labor Laws and Regulations as Well as the Indian Preference Act.**

In addition to affecting the capacity to distribute trust funds, the relocation violates the law. An unfair labor practice claim has been filed with the United States Federal Labor Relations Authority (FLRA) on behalf of the bargaining unit members of OIRM and the Division of Accounting Management. The FLRA found in favor of the bargaining unit members and has proposed a settlement agreement to close the matter. If BIA continues to ignore this overture, as it has others, the FLRA is prepared to prefer charges against the agency on behalf of the injured employees. This finding shows that the claim has merit and that the conduct alleged by the charge violates Articles 16 and 22 of the Collective Bargaining Agreement and 5 U.S.C. Section 7116 A(7).

A report of possible prohibited personnel practices or other prohibited activity was also filed with the Office of Special Counsel requesting an immediate stay of the forced transfer. The Office of Special Counsel was informed that the BIA was and is retaliating against the OIRM employees because of their whistle-blowing activities regarding the failures of TAAMS. Prior to the forced transfer of OIRM, employees who questioned the software engineering practices, data quality and data management, were reassigned to tasks other than TAAMS.

Lastly, the Office of Special Counsel was informed that the BIA's forced transfer of OIRM prevents compliance with the Indian Preference Act. The Bureau knows that most Native American employees would not relocate due to family, religious and tribal responsibilities. The forced transfer rips Indian federal employees from their families, their native populations whom they serve and protect, their culture and their mission.

## **2. The Relocation Is In Violation of Law Because It Involves a Misappropriation of Funds.**

Congress appropriated funds for the sole and explicit purpose of implementing BIA management improvement recommendations of NAPA. However, NAPA did not recommend dismantling OIRM operations; nor did it recommend the transfer of its functions to Reston, VA. One can search all 130 pages of the NAPA Report in vain and find no such suggestion. In fact, NAPA recommends the use OIRM operations in Albuquerque to assist weaker divisions of BIA to facilitate the improvement of operations throughout the BIA. It is a black letter law that the use of appropriations for purposes other than those expressly authorized by Congress constitutes a violation of the Antideficiency Act, 31 U.S.C. 1301(a). Where an appropriation specifies the purpose for which the funds are to be used as Congress has here mandated through H.R. 3423 Sec. 137(a), the Antideficiency Act restricts the use of the funds to that specified purpose. Thus, no funds so appropriated can be used lawfully by the Interior or its contractors to transfer OIRM operations functions to Reston or to delegate the functions of OIRM to a government contractor. Accordingly, not only are the statements of the Assistant Secretary or other Interior personnel to the Senate Committee on Indian Affairs that NAPA made this recommendation materially incorrect, but Interior's misuse of funds appropriated through the rider to H.R. 3423 to dismantle OIRM is expressly prohibited.

### *Potential violations of law:*

Conspicuously, Congress through H.R. 3423 did not see fit to provide Interior with a waiver of certain laws by its inclusion in the rider the common statutory waiver language "notwithstanding any law to the contrary." Thus, even if the appropriations language were otherwise sufficient to permit the use of funds for such purposes – which it is not- compliance with all other applicable laws is absolutely necessary. And this Interior has failed to do. Unfortunately, Interior has left a trail of violations of law in its path in its desperate effort to create dual illusions for Congress, that it is in fact improving BIA management; and for the Court

in *Cobell v. Babbitt* that it is doing that to which Secretary Babbitt and Assistant Secretary Gover testified in court to avoid more severe contempt sanctions or possibly the appointment of a receiver.

The contrary is true. If Congress allows the dismantling of OIRM operations, it will enable the Secretary to destroy one of the few BIA divisions that has functioned well. Consequently, the harm to the employees and those who the operations division serve, Indian trust beneficiaries constitutes a violation of the Trade Secrets Act and the Indian Minerals Development Act which carry criminal penalties. See letter dated February 29, 2000, from Dennis M. Gingold to Alan L. Balaran, Special Master, confirming the Justice Department position that dissemination of trust information without a waiver or consent of the trust beneficiaries is a violation of federal criminal law.

#### **Impact on Indian OIRM Employees**

The negative impact on American Indian OIRM employees of the forced relocation is breathtaking. The BIA's relocation of OIRM forces my clients to choose between keeping their jobs and continuing to reside in the heartland of their Indian culture, heritage, communities and families.

As you are aware, it is an integral part of Indian culture and heritage to live in tribal communities and in areas where tribal customs can be observed.

The forced relocation ensures that many BIA American Indian employees will lose their jobs because they cannot bear to abandon their culture. The relocation also ensures that other Indian employees will feel they have no choice but move to Virginia and, therefore, suffer the loss of their culture. Further, OIRM employees are involved in the medical care of family members. OIRM employees have tribal responsibilities and spouses. These jobs are critical to family stability and this forced relocation devastates OIRM employees' tribes, culture and families.

The impact on OIRM Indian employees of the forced relocation is elucidated by the following statements from affected employees:

By Charlene Lattier

“As for the transfer of function to Reston, VA, the move was not an option for my family. My husband works for a major international corporation which does not have operations near Reston, VA. Living in Albuquerque, NM also allows me to be near my parents, which is very important. My parents only have one set of grandchildren to whom they are close – my children. Moving to Virginia would not allow easy access to the grandchildren. Further, growing up in a culturally diverse environment is important to both my husband and myself. It allows my three children the opportunity to know and appreciate their cultural heritage.”

By Evelyn Riggs

“I am a single person with a home in Albuquerque and I cannot be without a job since I am the person responsible for all bills and payments. The only reason I am transferring is that all Computer Specialist positions for which I may apply are not being open for application until 3/13/00, which is after the last working day with OIRM.”

“My family – brothers and sisters are also affected by the move. As Indian people we are very strongly tied to the land and our culture. The Reston or Washington, DC, area has less than 1% Indian population. 99.99% of the Indian people and reservations are west of the Mississippi River. This is an infringement on my cultural, religious and heritage rights which I enjoy now in my native homeland.”

“I lost my mother less than a year ago and there are legal matters which still need to be settled for which I need to be present. I am the person that represents my family for these issues...I am currently in the process of transferring my mother's homesite lease into my name, I have to constantly monitor with telephone calls and personal visits to tribal offices and BIA offices. I also am the holder of the grazing permit for my family.



Because of family obligations and my mother's trust I have these responsibilities which I feel I owe my mother and siblings."

By Jennifer Suina

"I have declined the offer to relocate with my job because New Mexico has been my home since birth and where my family and relatives reside. I'm a Native American woman from the Pueblo of Cochiti and a single parent. As you are aware, as a Native American our cultural activities are a major part of our way of life. Leaving New Mexico would mean giving up my unique cultural traditions. My family's lifetime traditional commitments and my own beliefs outweighed every reason I could think of in transferring with my job. This move does not only cause hardship for me my child but will greatly impact the economy of the City of Albuquerque, surrounding counties and tribal communities, and the State of New Mexico. Three years ago I purchased my first home and I pray that I don't lose it because I cannot find a job that pays me enough to make the mortgage plus provide for my child."

"I have about 4 months of severance pay and hope I'm back in federal service before it runs out. I have been federal service close to 15 years and I'm proud of my accomplishments. During this time I have been given the opportunity to advance in my position as a computer specialist and more importantly provide technical service to BIA employees nationwide."

"It makes no sense to move the Albuquerque office to Washington, D.C. when the majority of the Native American tribes we service are located in the southwestern states. We're centralized and it is cost effective for both our "trust beneficiaries" and our office in conducting business. We work in conjunction with the Office of trust Funds Management (OTFM) and the Office of Indian Education Programs (OIEP) located in Albuquerque,

N.M. to provide technical assistance and telecommunications service to their respective regional offices and schools, and tribes across the nation.”

By Judy Duncan

“I feel the beneficiary trustees are ones who will suffer because they rely on these checks. They know when their checks should be in the mail and if one day passes, they are at the agency offices inquiring about them. The majority of the Indian people are populated west of the Mississippi. The employees who work here are from this area and can answer questions in their own native tongue. We have deep roots and a strong culture here. My mother is up in years and I make trips almost every other weekend to see her because we lost my stepfather last May after being together for 30 years so my mother is by herself. Although my sister is there, I still make trips to help my sister.”

“Not only that, my family is very affected by this move. I am a single parent with four daughters. Although they are grown, I need them and they need me. One of my daughters is legally blind and who just had a baby on February 9<sup>th</sup>. She has been in the hospital for 2 weeks from complications from c-section childbirth and still having problems at home with her health. I cannot afford to move to Reston, Virginia and expect to pay rent and still keep my house. I just purchased a house in October and am not about to sell it.”

The NAPA report did not have as a recommendation the transfer of OIRM to Reston, Virginia. The appropriations bill provided funding to implement the recommendations of the NAPA Report. The BIA’s improper forced transfer is a tragedy for the OIRM employees, a tragedy for Indian trust beneficiaries and violates the law. This is a travesty you have the power to stop. For the benefit of Indian OIRM employees and the Indian trust beneficiaries, I implore you use your power and call a halt to the relocation using your appropriations power.

Indian OIRM employees must not have their lives and communities devastated by an unauthorized, forced BIA relocation which was neither recommended by the NAPA Report nor, as a result, appropriately funded.